HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.34485 of 1997

Dated 23th Day of February, 2007

Between:

K. Hanumantha Rao .. Petitioner

And

The Competent Authority and
Special Officer, Urban Land Ceilings,
Guntur .. Respondent

O R D E R:

This writ petition is filed seeking a mandamus to declare the action of the respondent in rejecting the request of the petitioner for grant of permission under Section 26 of the Urban Land Ceiling Act in respect of an extent of 650 sq. metres of land in D.No.999/1, situated in Guntur without reference to U.L.C.No.1/94 under Memo L.Dis.No.1588/97-C, dated 6.12.1997 in spite of the fact that the petitioner is holding the land within 2000 square metres, as arbitrary and illegal.

The brief facts of the case are that the petitioner instituted a suit against his father and brothers for partition of the suit schedule properties into 6 equal shares by metes and bounds and for delivery of possession of his share. The judgment and preliminary decree dated 17.1.1991 were passed entitling him to 1/6th share of the schedule properties and the decree became final in I.A.No.615 of 1992 in O.S.No.761 of 1984 and the petitioner was allotted Ac.43.2/3rd cents of land under E.P.No.377 of 1996. When the petitioner was put into possession of his share of land he made an application to the respondent requesting him to grant permission under Section 26 of the Act. Now, the petitioner's grievance is that the respondent, without assigning any reasons, rejected his application on the ground that the site in question is involved in surplus portion of land Urban Land Ceiling.No.1/94.

Heard the learned counsel for both the parties.

Apart from the declaration given by the father of the petitioner

under Section 6(1) of the Act on 31.3.1994 to the effect that his family consists of six units i.e. himself and five major sons including the petitioner, here is a decree passed by a competent civil Court in O.S.No.761 of 1994 wherein it clearly held that the petitioner's entitlement is only 1650 square yards, and accordingly, he is put in possession of the said extent of land. Having regard to the decree passed by the civil Court, this Court is of the view that it is irrelevant whether the entire extent of land, which the family of the petitioner's father has, is more than ceiling limit or not. What is to be seen is whether the land put in possession of the petitioner is within the ceiling limit or not. If the land, which is in possession of the petitioner, is within the ceiling limit, the authorities concerned should have permitted him to sell away the land as requested by him. However, having regard to the fact that Section 8(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (for brevity "the Act") prescribes that a notice stating that any objection to the draft statement shall be preferred within 30 days of the service thereof, this Court is of the view that the authority i.e. the respondent may prepare a draft statement as regards the vacant land held in excess of ceiling limit and serve notice to the petitioner so that the petitioner can offer his explanation. Thereafter, the competent authority can pass appropriate orders.

It is contended by the learned Government Pleader that the draft statement was already served on one of the sons i.e. K.Ramanaiah, but in my considered view, that cannot be deemed to be service of notice on the petitioner. Evidently, the petitioner is put in possession of the land in question by virtue of a decree passed by a competent Court of civil jurisdiction and hence, the petitioner also shall be put to notice of the draft statement.

Hence, this writ petition is disposed of with a direction to the competent authority and Special Officer, Urban Land Ceilings at

Guntur to prepare a draft statement as provided under Section 8 of the Act and serve a notice calling for objections from the petitioner as contemplated under Sub-section (3) of Section 8 of the Act, and the petitioner, within 30 days from the date of receipt of the draft statement shall offer his explanation, on that the competent authority may pass appropriate orders. No costs.

_____

23.02.2007

bcj